

*To the Executive Committee for the International Exposition
of 1892:*

The undersigned, Committee on Plan and Scope, have the honor to report as follows:

There are some questions of law and constitutional power, which confront each of the four principal standing committees for the International Exposition.

Each Committee must shape its work largely in accordance with its views upon these questions, and an agreement of views is necessary to harmony in their action.

We have endeavored by a critical examination of statutes, judicial decisions and precedents, to arrive at definite conclusions upon these questions.

We have assumed as matter of fact—

1st. That the source of authority for the holding of the Exposition must be the National Government—that it must be controlled or conducted by some corporation or commission created or empowered by the Congress of the United States.

This results necessarily from the fact that invitations to foreign governments are recognized by them only when coming from the National Government.

The Centennial Commission and Centennial Board of Finance, which controlled and conducted the Philadelphia Exposition of 1876, were created by Acts of Congress; and the plan for the proposed International Exhibition in this city in 1883 proceeded upon a similar Act, passed by Congress April 23, 1880.

2d. That a substantial part of the large expenditure, which will precede any receipts from the Exposition, must be borne by the City or State in which the Exposition is held, or by both of them.

The City of Philadelphia, in addition to considerable sums paid for preliminary expenses, appropriated to the use of the Exposition of 1876, at first \$500,000, and subsequently \$1,000,000, and gave the use of Fairmount Park. The State of Pennsylvania appropriated for the use of the Exposition one million dollars.

Aside from these sources, the funds of the Philadelphia Exposition in advance of receipts consisted of a loan of \$1,500,000 from the Government of the United States, and a stock subscription taken almost entirely in the City of Philadelphia.

3d. That the corporate body or agency charged with the procurement of a site must possess the power to acquire lands by the exercise of eminent domain. It may not, perhaps, be called upon to exercise that power; but without it, freedom of choice and efficiency of action would be impossible.

The Legislature of New York gave such power by Chapter 474 of the Laws of 1880 to the corporation created by Congress for the purposes of the proposed Exhibition of 1883.

The two propositions, that the Exposition must be managed by a national corporation or association, and that the City or State, or both, must contribute substantially towards its expense, meet with apparent difficulty in the following provisions of the Constitution of the State of New York:

"Article 8, Section 10. Neither the credit nor the money
"of the State shall be given or loaned to, or in aid of any
"association, corporation or private undertaking." * * *

“ Article 8, Section 11. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes.” * * *

In view of these provisions, an apparent dilemma arises. A commission or corporation must be created by authority of Congress to hold the Exposition, and with the right of eminent domain; but the City and State of New York are both forbidden to aid with money or credit any individual or corporation, and this prohibition would include either a commission or a corporation created by Congress.

A somewhat similar dilemma evidently confronted the organizers of the Philadelphia Exposition of 1876, for the Pennsylvania Constitution provided—“ The credit of the Commonwealth shall not in any manner or event be pledged or loaned to any individual, company, corporation or association, nor shall the Commonwealth hereafter become a joint owner or stockholder in any company, association or corporation.”

They solved the difficulty in the following manner:

The City of Philadelphia, on the 22d of February, 1873, appropriated \$500,000 “ towards the erection of buildings in Fairmount Park for the National Exhibition to commemorate the 100th anniversary of the birth of the nation,” with the proviso that such buildings should remain in said park, as the property of the City of Philadelphia for the exhibition and preservation of such works of nature, art, and products of the soil and mine, and works

“ of art applied to industry, copies and reproductions of articles of skill, for the free education and enjoyment of the people of the nation, after the year 1876, and for all time thereafter, under such rules and regulations as may from time to time be prescribed by the Commissioners of Fairmount Park.”

The Legislature of Pennsylvania, on the 27th of March, 1873, appropriated one million dollars “for the erection of a permanent Centennial Exposition building for the people of this Commonwealth, and for the use of the Centennial anniversary of American Independence, under the direction of the United States Centennial Board of Finance, incorporated by Act of Congress,” upon condition that one million dollars should be raised by private subscription; that five hundred thousand dollars should be appropriated by the City of Philadelphia, and that one million and a half dollars should be applied to the erection of a permanent Exposition building in Fairmount Park, which should remain “perpetually as the property belonging to this Commonwealth for the preservation and exhibition of National and State relics, and works of art, industry, mechanism, and products of the soil, mines, etc., of this State; and that it shall be kept open perpetually after the year Anno Domini one thousand eight hundred and seventy-six for the improvement and enjoyment of the people of this Commonwealth,” etc.

On the 2d of April, 1874, the City of Philadelphia made a further appropriation of one million dollars for the erection of a Conservatory and Machinery Hall “in Fairmount Park, to be used at the Centennial International Exposition in 1876.”

Upon the grounds in Fairmount Park and in the buildings thus erected, the Centennial Commission and the Cen-

centennial Board of Finance created by Congress conducted the Exposition of 1876.

The theory of this legislation was that while the State of Pennsylvania could not aid directly by a grant of money the Centennial Commission created by Congress, it could do so indirectly by assuming the construction of buildings needed and by authorizing the use of public lands in the City of Philadelphia for the public purpose of creating a place for the exhibition of works of art, industry, mechanism, etc., for the improvement and enjoyment of the people of the Commonwealth, and that the City of Philadelphia could apply municipal funds for a similar purpose within its corporate limits; and that both State and City could avail themselves of the Centennial Commission and Board of Finance as agencies to subserve that public use, thus securing to the people of the City and of the State whose money they were expending "the improvement and enjoyment" to be derived from bringing into their territory the works of art, industry, mechanism, etc., of all States and nations.

We are satisfied that this view of State and Municipal governmental power affords the only available method of reconciling National control with State and Municipal expenditure, and we have accordingly considered whether it can be sustained under the provisions of the Constitution of New York.

For convenience of presentation the question may be stated with regard to the City alone as follows:

1st. Can the City of New York be constitutionally empowered by the Legislature to acquire land and erect buildings for the purpose of an exhibition of arts and industry?

2d. Can the City be thus empowered to acquire lands and erect buildings not intended for a permanent exhibition, but solely for the use of a temporary exhibition international in its character, the use of the lands being acquired for a limited period, and with the intention of removing the buildings at the expiration of that period?

To answer these questions in the affirmative it is necessary to find that the proposed expenditure is for a *public purpose*, and not only that it is for a public but for a *City* purpose within the meaning of Section 11 of Article 8 of the Constitution.

As to what constitutes a public purpose and what a corporate municipal purpose, there has been upon various states of fact a great mass of judicial decisions, with which we will not encumber this report further than to illustrate the views taken by the Courts of last resort.

The Court of Appeals of New York, in the case of *Weisner against Village of Douglas* (64 N. Y., 92, 99), says:

“ It is a general rule that the legitimate object of raising money by taxation is for public purposes, and the proper needs of government, general and local, State and municipal. When we come to ask, in any case, what is a public purpose, the answer is not always ready, nor easily to be found. It is to be conceded that no pinched or meager sense may be put upon the words, and that if the purpose designated by the Legislature lies so near the border line as that it may be doubtful on which side of it it is domiciled; the courts may not set their judgment against that of the lawmakers. * * *

“ It may also be conceded that that is a public purpose, from the attainment of which will flow some benefit or convenience to the public, whether of the whole commonwealth or of a circumscribed community. In this latter

“ case, however, the benefit or convenience must be direct
 “ and immediate from the purpose, and not collateral, remote or consequential. It must be a benefit or convenience which each citizen of the community affected may
 “ lay his own hand to in his own right, and take unto his
 “ own use at his own option, upon the same reasonable
 “ terms and conditions as any other citizen thereof.”

The same Court said in the *Matter of Niagara Falls & Whirlpool Railroad Company* (108 N. Y., 375, 386): “ It is, as
 “ we have said, difficult to make an exact definition of a
 “ public use. It is easier to define it by negation than by
 “ affirmation. We are conscious of the serious responsibility
 “ which the Court assumes in undertaking to declare that
 “ not to be a public use, which the Legislature has declared
 “ to be such. The validity of an act of the Legislature is
 “ not to be assailed for light reasons. It is especially necessary that the question of what constitutes a public use,
 “ should not be dealt with in a critical or illiberal spirit, or
 “ made to depend upon a too close construction adverse to
 “ the public.”

The Supreme Court of the United States declared the rule as follows in the case of *Loan Association vs. Topeka* (20 Wallace, 654, 655): “ We have established, we think, beyond
 “ cavil that there can be no lawful tax which is not laid for
 “ a public purpose. It may not be easy to draw the line in
 “ all cases so as to decide what is a public purpose in this
 “ sense and what is not.

“ It is undoubtedly the duty of the Legislature which
 “ imposes or authorizes municipalities to impose a tax to
 “ see that it is not to be used for purposes of private interest instead of a public use, and the Courts can only be
 “ justified in interposing when a violation of this principle
 “ is clear and the reason for interference cogent. And in
 “ deciding whether, in the given case, the object for which

“ the taxes are assessed falls upon the one side or the other
 “ of this line, they must be governed mainly by the course
 “ and usage of the Government, the objects for which taxes
 “ have been customarily and by long course of legislation
 “ levied, what objects or purposes have been considered
 “ necessary to the support and for the proper use of the
 “ Government, whether State or municipal. Whatever
 “ lawfully pertains to this and is sanctioned by time and the
 “ acquiescence of the people may well be held to belong to
 “ the public use, and proper for the maintenance of good
 “ government, though this may not be the only criterion of
 “ rightful taxation.”

We are clear that within the rules thus laid down, an exhibition of Works of Art and Industry, in the benefits of which the whole public share equally, and which is for the benefit of no individual as distinct from the public, is a public purpose, and the establishment and maintenance of such an exhibition in or near any municipality, is a municipal purpose.

We have been for many years expending the money of the City for purposes similar in character and differing only in degree, under a long course of legislation, which has been “ sanctioned by time and the acquiescence of the people.”

By chapter 197 of the Laws of 1870, the Legislature of New York incorporated the Metropolitan Museum of Art “ for the purpose of establishing and maintaining in said City a Museum and Library of Art, of encouraging and “ developing the study of the Fine Arts, and the application “ of arts to manufacture in practical life, of advancing the “ general knowledge of kindred subjects; and to that end, “ of furnishing popular instruction and recreation.”

By chapter 290 of the Laws of 1871, the Park Commissioners were authorized to erect in Manhattan Square or

any other public park, square or place in the city, "a
 "suitable fire-proof building for the purpose of establish-
 "ing and maintaining therein, under suitable rules and
 "regulations to be prescribed by the city from time to
 "time, a Museum and Gallery of Art by the Metropolitan
 "Museum of Art," incorporated as above stated, and the
 city was authorized to borrow the money with which to
 construct the building.

In the Consolidation Act of 1882, which now constitutes
 our city charter, the Park Department was directed to con-
 tinue the contract with the Metropolitan Museum of Art,
 for the occupation of the building so erected and for main-
 taining therein its museum, library and collections and
 carrying out the objects and purposes of said Museum of
 Art.

By chapter 579 of the Laws of 1887, an annual appro-
 priation of \$20,000 for the keeping, preservation and exhibi-
 tion of the collections of this Museum was authorized.

By chapter 513 of the Laws of 1889, an extension of the
 Museum building, at an expense to the city of \$400,000,
 was authorized.

There has been a similar course of legislation and ex-
 penditure in relation to the American Museum of Natural
 History, incorporated by chapter 119 of the Laws of 1869.

It would be difficult at this late day, after the expenditure
 of vast sums of money, under the authority of so many
 successive Legislatures, with the concurrent action of so
 many public officers, and the universal acquiescence of the
 people, to contend that the improvement and enjoyment to
 be derived from such exhibitions as those of the Museums
 of Art and Natural History, are not within the public uses
 which our municipal government may by the authority of
 the State, lawfully subserve.

Nor would it be easy for the courts to say that was not

a public use which was declared so without challenge in so conspicuous an instance and upon so large a scale as in the legislation above cited, in respect to the Philadelphia Exposition.

Irrespective of precedent, such a use as this is strictly within the purposes of State and municipal governments.

It is well settled that the functions of such governments are not confined solely to the material convenience or welfare of the citizen.

Upon the one hand the duty to provide means of education, limited in its character and scope only by legislative discretion, is unchallenged, and upon the other, the long course of judicial decisions relative to public parks, establishes upon equally firm ground, the right to expend the money of the people in securing to them reasonable means of healthful recreation and enjoyment.

In the case, *In the Matter of the Application of the Mayor of the City of New York* (99 N. Y., 569) the Court of Appeals sustained the action of the Legislature in authorizing the expenditure of many millions of dollars for the new parks in part outside of the limits of the City of New York, and they say:

“ It appears to be conceded, and has not been denied,
 “ that the acquisition and maintenance of public parks, securing pure air and healthful rest and recreation to the
 “ people, is a ‘city purpose,’ when executed within the
 “ corporate limits, and the sole contention is that it ceases
 “ to be a city purpose when in any degree or to any extent
 “ it moves outside of those boundaries.”

In a still more recent case, *In the Matter of Niagara Falls & Whirlpool R. R. Co.* (108 N. Y., 375, 386) the Court of Appeals say:

“ The taking of lands by municipalities for public parks

“is recognized as being for public use. They contribute to the health and enjoyment of the people, and are laid out with drives and ways for public use.”

Such an exhibition as was described in the acts relating to the Philadelphia Exposition, is designed to subserve both the purpose of education and that of healthful recreation, and upon principle it may be sustained as a proper object for the expenditure of public money upon either or upon both of those grounds.

That such an exhibition is not only a public use, but a city use, appears to be settled by the authorities above cited, and particularly by the Park case in 99 N. Y.

The Court there says that to constitute a city purpose, “the purpose must be primarily the benefit, use or convenience of the city as distinguished from that of the public outside of it, although they may be incidentally benefited, and the work be of such a character as to show plainly the predominance of that purpose;” and it also says, “Acquiring parks so near the city as to make them convenient and accessible, and likely to be overtaken and surrounded by the city’s growth, satisfies that condition.”

It seems equally clear that the establishment of the Exhibition, in or near the City of New York, where it will be most convenient and accessible to our citizens, satisfies the same condition in this case.

We are accordingly of the opinion that the City of New York can be constitutionally empowered by the Legislature to acquire land and erect buildings for the purpose of an exhibition of arts and industry.

Such an exhibition being a public and a corporate purpose, the question of its scope, extent and duration rests entirely in the discretion of the Legislature.

An estate for years may be taken by the exercise of eminent domain as readily as an estate in fee. Indeed, if the public use requires only an estate for years, it is not proper to condemn the fee.

If the Legislature considers that the temporary use of lands will contribute to the accomplishment of a purpose which is public, then unless the courts are prepared to say that this cannot be possibly so, they have no right to interfere with the exercise of eminent domain or the expenditure of public money to acquire and enjoy such a temporary use.

We are therefore also of the opinion that the temporary use of lands may be acquired, and temporary buildings may be erected thereon by the City of New York as incidental to any permanent exhibition which the Legislature may authorize, and that the second question above stated should be answered in the affirmative.

The conclusions reached by the Committee are that the precedents, and the law applicable to the matter, agree in determining the plan of organization and fix also the manner in which the various governments, Federal, State and Municipal, are able to co-operate together and with the citizens of a locality in the work of the Exposition :

FIRST.—That the Exposition must be conducted by a Commission or Corporation created by Congress.

SECOND.—That the contribution of the City and State toward the undertaking must be by way of furnishing the land and some portion of the buildings upon and in which the Corporation or Commission authorized by Congress may conduct the Exposition. The "plant" thus created by

City and State moneys will, at the close of the Exposition, remain the property of the City or State.

THIRD.—The real work is necessarily done by the citizens of the locality where the Exposition is held. They are recognized as entitled to large control over the undertaking, and they have usually furnished in the way of a Guarantec Fund what might be called the working capital of the Exposition, which in this case will be doubtless represented by stock in whatever Corporation is authorized to conduct the Exposition.

This Guarantec Fund will in general be used in providing machinery, materials and employees to carry on the Fair upon the grounds and in the buildings thus furnished.

(The Governments and States represented have been accustomed to bear the expense of their own exhibits.)

The legitimate receipts of the Exhibition from gate money, the sale of privileges and other sources will, after the payment of prizes and expenses, furnish a reasonable basis for the reimbursement to the subscribers of the moneys which they have advanced.

The subscription paper adopted by the Finance Committee is drawn in accordance with these views.

The learned Counsel to the Corporation has kindly met with us and assisted largely in our work, and we are authorized to say that he concurs in the views of the foregoing report.

October 30, 1889.

Respectfully submitted,

HUGH J. GRANT, Chairman.

JOHN M. BOWERS.

CHAUNCEY M. DEPEW.

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